

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B. CIVIL WRIT PETITION NO. 6339/2006
(Constable Permender Singh Vs. Union of India & Ors.)

Date of Order : 26/03/2007

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. S.P.Sharma for the petitioner.
Mr. Vinit Kumar Mathur, Assistant Solicitor General for the
respondents.

BY THE COURT:-

By the instant writ petition under Article 226 and 227 of the Constitution of India, the petitioner seeks quashing of order Annex.12 dated 9.5.2006 and a direction to the respondents to give him the same treatment which has been given to other similarly situated persons with regard to the quantum of sentence.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was initially enrolled as Constable with the respondent Border Security Force (for short 'the BSF' hereinafter) in the year 1988. He has served the respondents at various places from 1988 to 2005. In the year 2005, the petitioner was posted to 195 Battalion, BSF which was located at Krishnanagar in West Bengal. The 195 Bn. BSF at

Krishnanagar, West Bengal, where the petitioner was deployed, was detailed for security arrangement for Tripura Assembly Election-2003. The petitioner was also detailed to provide security coverage to election party at Shanta Ram Para J.B.School Booth No.11/26 on 26.2.2003. After the polling was over, the polling party along with the ballot boxes, agents etc. were returning to the District Election Officer under the security of the BSF personnel including the petitioner. While returning from the polling booth, the polling party was attacked by the militants in the way from behind bushes. There had been cross firing between the militants and the BSF personnel. However, the militants succeeded in causing death of as many as 5 BSF personnel and one jeep driver Subhash Nandi. The Court of Inquiry was held by the BSF authorities for this occurrence. On the recommendations of the Court of Inquiry, a disciplinary action was recommended against the petitioner and two other BSF constables namely T. Joswa and P.C.Sarkar who were also members of the same BSF team who had been escorting the polling party. They were charged under Section 40 of the BSF Act, 1968 that is to say "an omission prejudicial to good order and discipline of the force" vide Annex.1 and Annex.2 and they were put to trial before the Summary Security Force Court (for short "the SSFC" hereinafter) on 02.9.2004. It is stated that the petitioner and other similarly situated persons who were put to

trial before the SSFC, pleaded guilty and the petitioner was awarded punishment of forfeiture of five years past service for the purpose of pension and forfeiture of pay and allowance for three months. Out of the remaining two persons, T. Joswa was awarded punishment of reduction to the rank of constable and P.C.Sarkar was awarded punishment of reduction to the rank of constable and forfeiture of five years past service for the purpose of pension. Both these persons filed a statutory petition against the conviction and sentence by SSFC before the Deputy Inspector General, BSF. By the order Annex.10 dated 06.4.2005, the statutory petition filed by Constable T.Joshwa came to be decided and the sentence was commuted from 'reduction to the rank of constable' to 'forfeiture of seniority of rank for one year'. The statutory petition filed by P.C.Sarkar also came to be decided vide order dated 21.4.2005 stating in para No.3 as under :-

"In the same case, petitions of HC T. Joshwa and HC Benjamin Kujur have already been considered and lenient view was taken keeping in view their good record of service. The punishments awarded to them by the Court was commuted to forfeiture of seniority of rank for one year. Though your past record of service is not so encouraging but it will be unfair if the same benefit is not given to you as was given to other delinquents involved in the same incident. The Director General has, therefore, taken a lenient view by remitting the sentence of "forfeiture of 5 years past service for the purpose of pension" and commuting the sentence of "reduction to the rank of Const. to "forfeiture of seniority of rank for one year for the purpose of promotion."

So far as the statutory petition filed by the present petitioner is concerned, the respondent dismissed the petition vide order dated 8.5.2006 Annex. 12 and passed the following order :-

"As per records you were tried by SSFC on 02.09.2004 and submitted the statutory petition against the same on 11.10.2005 after a lapse of more than one year that too without obtaining a copy of the trial proceedings. As per BSF Rule 168 (2), a statutory petition should be submitted within 03 months of the date on which the sentence was promulgated provided that the time taken by such person to obtain a copy of the proceedings shall be excluded in calculating this period of three months. Since the sentence was promulgated to you on 02.09.2004, your petition dated 11.10.2005 is grossly time barred and, therefore, worthy Director General BSF has rejected the same being grossly time barred as well as being devoid of merit."

Thus, from Annex.12 it is more than clear that the case of the petitioner has not been examined on merit, but the petition has been rejected mainly on the ground that it is grossly time barred. The case of the petitioner is at par with that of Constables T. Joshwa and P.C.Sarkar and therefore, merely on the technical ground of limitation, the petitioner cannot be differentiated.

Learned Assistant Solicitor General appearing for the respondents failed to show any other ground differentiating the case of the petitioner from that of two other similarly situated persons namely T. Joshwa and P.C.Sarkar except that they filed the statutory petition within the period of limitation and the

petitioner failed to file the petition within the period of limitation but filed the same after some delay.

In my view, the petitioner deserves the same treatment which has been given to the other two similarly situated persons namely T. Joshwa and P.C.Sarkar.

In the result, the writ petition is partly allowed. The order impugned dated 09.5.2006 is set aside and the order dated 13.9.2004 awarding punishment to forfeit five years past service for the purpose of pension and to forfeit pay and allowance for three months to the petitioner is modified to the extent that the petitioner is awarded the punishment of forfeiture of seniority of rank for one year for the purpose of promotion. No order as to costs.

(H.R.PANWAR),J.

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